

EXHIBIT N

Wayne Berry

Email: WayneFBerry@Hotmail.com

December 24, 2004

CERTIFIED MAIL: 7003-1680-0006-9107-7285

Craig Birchette
Vice President and Assistant Secretary
Fleming Foods, Inc.
5701 North Shartel
Oklahoma City, Oklahoma 73118

Re: Software License Termination

Dear Mr. Birchette:

I am the developer and copyright owner of the following computer software and several hundred other related works of original authorship. (Hereinafter and collectively referred to as "BERRY TECHNOLOGY"):

Title	Certificate Number
FREIGHT CONTROL SYSTEM	TX 5-079-445

In accordance with the section 2F of the "End User License Agreement" ("EULA" – Attachment 1) granted to Fleming Companies, Inc. dba aka Fleming Foods, Inc., in the Fall of 1999:

Termination. Without prejudice to any other rights, Wayne Berry may terminate this EULA if you fail to comply with the terms and conditions of this EULA. In such event, you must destroy all copies of the SOFTWARE PRODUCT and all of its component parts.

This will confirm by the undersigned signature, that I, hereby revoke, and terminate the EULA (Attachment 1 of this letter), EULA Addendum 1 (Attachment 2 of this letter), EULA Addendum 2 (Attachment 3 of this letter) and any and all other licenses express or implied regarding any of my intellectual property, including but not limited to, BERRY TECHNOLOGY and any all derivatives and/or other related software programs of any kind that have been possessed and/or used by you, your affiliates, employees, agents, attorneys, partners, joint

P.O. Box 3727 • Honolulu • Hawaii • 96812

Wayne Berry

Email: WayneFBerry@Hotmail.com

ventures, purchasers, co-conspirators and/or any other entities claiming any rights to this software through the EULA, license or otherwise effective no later than immediately.

The grounds for the revocation and termination of any license to Berry Technology includes, but is not limited to, Fleming's total breach of the EULA and EULA Addendum 2 by attempting to claim ownership of my copyrights, the creation of unauthorized derivatives, the recasting of the software and derivatives, the transfer of copies of other BERRY TECHNOLOGY to C&S Acquisitions, LLC and/or C&S Wholesale Grocers, Inc. and affiliates and/or other entities and permitting Hawaiian Express Services, Inc. and other parties to use the software in direct violation of the license and the exclusive rights of the copyright owner. These violations of my copyright license, along with Fleming Companies, Inc.'s rejection of the license in its Bankruptcy, constitute material breaches giving rise to my right to revoke and terminate as set forth herein. See Fosson v. Palace (Waterland), Ltd., 78 F.3d 1448, 1455 (9th Cir., 1996). I hereby unequivocally exercise that right as to all who claim under the EULA or otherwise.

Any use or possession of any BERRY TECHNOLOGY from this point forward will remain as before intentional, willful, copyright infringement for financial gain and I shall seek any all remedies available to me, both civil and criminal, against any person who directly infringes, vicariously infringes or contributorily infringes any of my copyrights.


Wayne Berry

Enclosures:

Attachment 1: End User License Agreement" (EULA)
Attachment 2: EULA Addendum 1
Attachment 3: EULA Addendum 2
Attachment 4: United States of America Copyright Certificate – Freight Control System

END-USER LICENSE AGREEMENT

LICENSE FOR FREIGHT CONTROL SYSTEM SOFTWARE

LICENSEE:

Ralph Stussi
Fleming Foods, Inc.
91-315 Hanua Street
Kapolei, Hawaii 96707

LICENSOR:

Wayne Berry
P.O. Box 549
Haleiwa, Hawaii 96712

IMPORTANT-READ CAREFULLY: This End-User License Agreement ("EULA") is a legal agreement between you (Fleming Foods, Inc.) and Wayne Berry for the software product identified above, which includes computer software and may include associated media, printed materials, and "online" or electronic documentation ("SOFTWARE PRODUCT"). An amendment or addendum to this EULA may accompany the SOFTWARE PRODUCT. BY INSTALLING, COPYING, OR OTHERWISE USING THE SOFTWARE PRODUCT, YOU AGREE TO BE BOUND BY THE TERMS OF THIS EULA.

The SOFTWARE PRODUCT is protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. The SOFTWARE PRODUCT is licensed, not sold.

1. **GRANT OF LICENSE.** This EULA grants you the following rights provided that you comply with all terms and conditions of this EULA:
 - a. **Types of Software.** The SOFTWARE PRODUCT contains some or all of the following types of software: Server Software, Client Software, Screens, Reports, Database and "Glue Logic" or Integration Code.
 - b. **Server Software and Database.** At any given time, you may install one copy on a single computer.

HF 00252

Page 1 of 5
October 29, 1999

ATTACHMENT 1

- c. Client Software, Screens, Reports, "Glue Logic" or Integration Code. At any given time, you may install up to one copy on up to ten (10) separate computers.
- f. This EULA is not transferable to anyone other than Fleming Foods, Inc.
- g. Additional Software. Any software provided to you by Wayne Berry which updates or supplements the original SOFTWARE PRODUCT is part of the SOFTWARE PRODUCT and is governed by this EULA, unless other terms of use are provided with such updates or supplements. Any software provided to you along with the SOFTWARE PRODUCT that is associated with a separate end-user license agreement is licensed to you under the terms of that license agreement, except if this EULA specifically sets forth the terms of use for such software then the terms set forth in this EULA shall apply.
- h. Reservation of Rights. All rights not expressly granted are reserved by Wayne Berry.

2. DESCRIPTION OF OTHER RIGHTS AND LIMITATIONS. For SOFTWARE PRODUCT.

- a. Software Transfer. You may transfer the SOFTWARE PRODUCT to another computer, provided that it is removed from the computer from which it is transferred.
- b. Rental. You may not rent, lease, or lend the SOFTWARE PRODUCT.
- c. Notice to Users. You shall inform all users of the SOFTWARE PRODUCT of the terms and conditions of this EULA.
- d. Limitation on Modifications, Reverse Engineering, Decompilation, and Disassembly. You may not modify, reverse engineer, decompile, or disassemble the SOFTWARE PRODUCT.
- e. Performance or Benchmark Testing. You may not disclose the results of any benchmark test of the SOFTWARE PRODUCT.
- f. Termination. Without prejudice to any other rights, Wayne Berry may terminate this EULA if you fail to comply with the terms and conditions of this EULA. In such event, you must destroy all copies of the SOFTWARE PRODUCT and all of its component parts.
- g. Consent to Use of Data. With respect to technical information and data you provide to Wayne Berry as part of any (if any) support services related to the SOFTWARE PRODUCT ("Support Services"), you agree that Wayne Berry (and his affiliates and agents) may collect, process and use such information for its

HF 00253

Page 2 of 5
October 20, 1999

ATTACHMENT 1

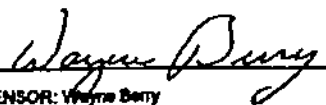
business purposes, including but not limited to product support and development.

- h. Application Sharing Technology. The SOFTWARE PRODUCT may contain technology that enables applications to be shared between two or more computers, even if an application is installed on only one of the computers. You may not use this technology.

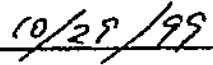
3. INTELLECTUAL PROPERTY RIGHTS. All title and intellectual property rights in and to the SOFTWARE PRODUCT (including but not limited to any database designs, report designs, custom code, functional designs, images, photographs, animations, video, audio, music, text, and "applets" incorporated into the SOFTWARE PRODUCT), and any copies you are permitted to make herein are owned by Wayne Berry. You may not copy any printed materials accompanying the SOFTWARE PRODUCT.
4. ENTIRE AGREEMENT. This EULA (including any addendum or amendment to this EULA which is included with the SOFTWARE PRODUCT) are the entire agreement between you and Wayne Berry relating to the SOFTWARE PRODUCT and the Support Services (if any) and they supersede all prior or contemporaneous oral or written communications, proposals and representations with respect to the SOFTWARE PRODUCT or any other subject matter covered by this EULA.

LIMITED WARRANTY

THERE ARE NO WARRANTIES EXPRESSED OR IMPLIED. THE SOFTWARE PRODUCT IS MADE AVAILABLE UNDER THIS EULA "AS IS" WITH ANY REVISIONS UP TO AND INCLUDING WORK PERFORMED BY WAYNE BERRY AS OF OCTOBER 29, 1999.



LICENSOR: Wayne Berry



Date

HF 00254

Page 3 of 5
October 29, 1999

ATTACHMENT 1

ADDENDUM TO END-USER LICENSE AGREEMENT

ADDENDUM FOR FREIGHT CONTROL SYSTEM SOFTWARE

1. In exchange for Wayne Berry (LICENSOR) granting this EULA to Fleming Foods, Inc (LICENSEE), LICENSEE agrees to employ all former API employees of record date (September 1, 1999) beginning November 1, 1999 for a period of not less than 1 year and at their former or better pay scale and benefit package. This employment agreement shall not include Jack Borja. LICENSOR will not be in breach of this agreement if any of the "former API employees" quit or create a disciplinary condition that requires dismissal from LICENSOR's employ.
2. In exchange for LICENSOR granting LICENSEE this EULA, LICENSEE agrees to indemnify Jack Borja from any and all personal liabilities associated with the former API / Fleming Partnership, including but not limited to the 4 Trucks leased specifically to facilitate shipments to LICENSEE, the forklifts and ancillary equipment leased to facilitate shipments to LICENSEE, the computer specifically leased to facilitate shipments to LICENSEE and any legal actions taken to protect the API / Fleming Partnership. LICENSOR shall use the TRW credit reporting service to monitor the enforcement of this clause. If a bad credit report is made to TRW in connection with this former API / Fleming Partnership and cannot be remedied and removed within 60 days, LICENSEE will have violated this EULA.
3. LICENSOR will not be bound by any prior or past agreements that may restrict LICENSOR's legal remedies. Specifically, LICENSOR is not bound by any restrictions to any form of arbitration with the LICENSEE and may specifically pursue any and all legal remedies in the appropriate court including lawsuits and injunctive relief. Effective November 1, 1999, this agreement supercedes all prior written and oral agreements.
4. The SOFTWARE PRODUCT may only be used by LICENSEE in the State of Hawaii, within the LICENSEE's facility.
5. LICENSEE agrees that LICENSEE has been granted access to proprietary intellectual property and trade secrets contained in the SOFTWARE PRODUCT and may not replace this SOFTWARE PRODUCT with another custom system of comparable design or functionality without the burden of proving that the replacement custom software was developed without the

Page 4 of 5
October 29, 1999

HF 00255

ATTACHMENT 2

assistance of LICENSEE and without violating this EULA. Furthermore, LICENSEE may not disclose, divulge or in any way make available to any other company or entity the proprietary intellectual property and trade secrets contained in the SOFTWARE PRODUCT.

6. LICENSEE may not use or create any additional I/O subsystems (Screens, Databases, Reports, "Glue Logic" or Integration Code) that are intended for use with or in conjunction with this SOFTWARE PRODUCT.
7. LICENSOR is under no obligation to support, modify or augment this SOFTWARE PRODUCT.
8. This SOFTWARE PRODUCT has operated for more than one year, essentially unchanged as to functionality and usage. Therefore, this SOFTWARE PRODUCT is made available to LICENSEE "as is and where is" without any other warranties expressed or implied.
9. All "Crystal Reports" used with this SOFTWARE PRODUCT must be compiled by LICENSEE. Only compiled versions of the reports, incorporated in the SOFTWARE PRODUCT, may be used by LICENSEE after December 15, 1999. LICENSEE is prohibited from making any new reports or functional and esthetic changes to any of the existing reports after September 1, 1999.
10. LICENSEE understands the original contract value of this software is \$2 million dollars. Any damages sought by LICENSOR against LICENSEE will use this amount as a basis but not a limitation of LICENSEE's obligation to LICENSOR for using this SOFTWARE PRODUCT under the terms of this EULA.


LICENSOR: Wayne Berry

10/29/99
Date

Page 5 of 5
October 29, 1999

HF 00256

ATTACHMENT 2

Fleming

MEMORANDUM

Date: November 24, 1999

To: Wayne Berry

From: Ralph Stussi

Subject: License agreement for freight control system

I am in receipt of the end user license agreement and addendum you have prepared dated October 29, 1999. I had not seen this document until Monday evening November 22, 1999, and must say it not acceptable to Fleming Companies, Inc. Let me go through our understanding in all this.

We understand that you will grant us a no charge user license for the software you have developed for API and that you wish to market it commercially. We only intend to use this software to support our local freight operation and will not sell or issue copies to other businesses. We do not intend to transfer copies of this software to other company locations beyond Hawaii. To this end, we understand that copyright laws and international copyright treaties, as well as other intellectual property laws and treaties protect the software product. We understand that this product is licensed, not sold and that all title and intellectual property rights in and to the software product and any copies we make are owned by you. We also understand that there are no warranties expressed or implied and that the product is made available to us "as is" with any revisions up to and including work performed through October 29, 1999. If you become aware of any situations where files or programs are transferred to unauthorized users, please advise me and I will pursue this immediately. I will also advise my associates of this.

We must have the ability to change and modify reports that come out of the system. The database that exists has so much information that can be used, new reports and information will be constantly evolving from the operation as it has in the past. There is a big question about the Crystal report writing software and the reports that are written from the database with this software. You have advised me that we can use the Crystal software to modify and develop reports, but that you cannot be responsible for the accuracy of the data in these reports.

EX-1

149

ATTACHMENT 3

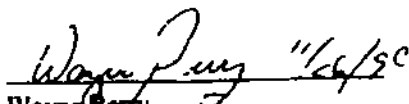
The long-term goal of our operation is to interface with our company's total inbound logistics system. This will be done utilizing software licensed by our company from another provider. We are still in the process of obtaining information about how it will work with an ocean freight situation versus mainland backhauls. If it will accommodate what we are doing, we will schedule a conversion and once all is up and running we would plan on removing your inbound freight software at that time.

With regard to the TSI EDI interface, I admit that I do not totally understand what is technically happening here. Our intention is to work with our corporate staff people to develop a download that will allow the current P.O. and other file information that is being transferred using TSI EDI and Kleinschmidt to download directly from our mainframe. This project is being worked on and should be completed by the first of January 2000. I believe this is all part of the transition we have agreed to work through. At that time we would be able to cancel the Kleinschmidt agreement and would no longer need the TSI EDI interface. If this interface cannot be accomplished we would plan to discuss further with you the purchase of the TSI EDI interface for the system or a suitable, less expensive alternative.

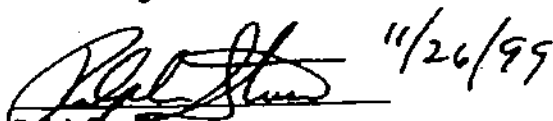
In another area, the information contained in the database includes confidential Fleming information. This information must be kept and should not be shared with outside, unauthorized parties without first obtaining our written approval. Currently we understand and approve the sharing that has taken place in order to prepare our anti-trust case with Sea Land.

If this understanding is acceptable to the parties, please acknowledge below.

Acknowledged:

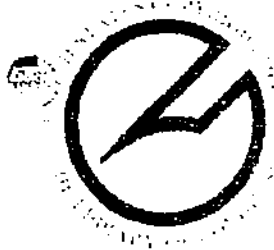

Wayne Berry

Acknowledged:


Ralph Stuss

A00450

CERTIFICATE OF REGISTRATION



This Certificate is used under the seal of the Copyright Office in accordance with title 17, United States Code, to attest that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Marybeth Peters

FORM TX
For a Non-dramatic Literary Work
UNITED STATES COPYRIGHT OFFICE

REGISTRATION NUMBER

TX 5-879-445



EFFECTIVE DATE OF REGISTRATION

OCT. 19, 1999
Month Day Year

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

1

TITLE OF THIS WORK ▼
Freight Control System

PREVIOUS OR ALTERNATIVE TITLES ▼

PUBLICATION AS A CONTRIBUTION If this work was published as a contribution to a periodical, serial, or collection, give information about the collective work in which the contribution appeared. Title of Collective Work ▼

If published in a periodical or serial give: Volume ▼ Number ▼ Issue Date ▼ On Pages ▼

2

NAME OF AUTHOR ▼
Wayne Foster Berry

DATES OF BIRTH AND DEATH
Year Born ▼ Year Died ▼
1955

Was this contribution to the work a "work made for hire"?
☐ Yes
☒ No

AUTHOR'S NATIONALITY OR DOMICILE
Name of Country
OR { Citizen of USA
Domiciled in _____

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK
Anonymous? ☐ Yes ☒ No
Pseudonymous? ☐ Yes ☒ No
If the answer to either of these questions is "Yes," see detailed instructions.

NOTE

Under the law, "author" of a "work made for hire" is generally the employer, not the employee (see instructions). For any part of the work that was "made for hire" check "Yes" in the space provided, give the employer (or other person for whom the work was prepared) as "Author" of that part, and leave the space for dates of birth and death blank.

NATURE OF AUTHORSHIP Briefly describe nature of material created by this author in which copyright is claimed: ▼
Computer Program

NAME OF AUTHOR ▼

DATES OF BIRTH AND DEATH
Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"?
☐ Yes
☒ No

AUTHOR'S NATIONALITY OR DOMICILE
Name of Country
OR { Citizen of _____
Domiciled in _____

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK
Anonymous? ☐ Yes ☒ No
Pseudonymous? ☐ Yes ☒ No
If the answer to either of these questions is "Yes," see detailed instructions.

NATURE OF AUTHORSHIP Briefly describe nature of material created by this author in which copyright is claimed: ▼

NAME OF AUTHOR ▼

DATES OF BIRTH AND DEATH
Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"?
☐ Yes
☒ No

AUTHOR'S NATIONALITY OR DOMICILE
Name of Country
OR { Citizen of _____
Domiciled in _____

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK
Anonymous? ☐ Yes ☒ No
Pseudonymous? ☐ Yes ☒ No
If the answer to either of these questions is "Yes," see detailed instructions.

NATURE OF AUTHORSHIP Briefly describe nature of material created by this author in which copyright is claimed: ▼

3

YEAR IN WHICH CREATION OF THIS WORK WAS COMPLETED
1993
This information must be given in all cases.

DATE AND NATION OF FIRST PUBLICATION OF THIS PARTICULAR WORK
Complete this information ONLY if this work has been published. Month 11 Day 27 Year 95
NATION USA

4

COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given in space 2 ▼

Wayne Foster Berry
425 South Street, #2603 A
Honolulu, Hawaii 96813

TRANSFER If the claimant(s) named here in space 4 is (are) different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright: ▼

APPLICATION RECEIVED

ONE DEPOSIT RECEIVED

TWO DEPOSITS RECEIVED

FUNDS RECEIVED

MORE ON BACK - Complete all applicable spaces (numbers 5-9) on the reverse side of this page.
- See detailed instructions. - Sign the form at line 8.

DO NOT WRITE HERE
Page 1 of 2 pages

ATTACHMENT 4

EXAMINED BY
CHECKED BY

FORM TX

☐ CORRESPONDENCE
YesFOR
COPYRIGHT
OFFICE
USE
ONLY

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

PREVIOUS REGISTRATION Has registration for this work, or for an earlier version of this work, already been made in the Copyright Office?

☐ Yes ☐ No If your answer is "Yes," why is another registration being sought? (Check appropriate box.)a. ☐ This is the first published edition of a work previously registered in unpublished form.b. ☐ This is the first application submitted by this author as copyright claimant.c. ☐ This is a changed version of the work, as shown by space 6 on this application.

If your answer is "Yes," give: Previous Registration Number

Year of Registration

DERIVATIVE WORK OR COMPILATION

Preexisting Material Identify any preexisting work or works that this work is based on or incorporates.

Material Added to This Work Give a brief, general statement of the material that has been added to this work and in which copyright is claimed.

DEPOSIT ACCOUNT If the registration fee is to be charged to a Deposit Account established in the Copyright Office, give name and number of Account.
Name Account Number

CORRESPONDENCE Give name and address to which correspondence about this application should be sent. Name/Address/Apt./City/State/ZIP

Wayne Foster Berry
425 South Street, #2603
Honolulu, Hawaii 96813

Area code and daytime telephone number 808-545-5817

Fax number 808-545-5837

Email WayneB@pxg.com

CERTIFICATION* I, the undersigned, hereby certify that I am the

Check only one

- ☒
- author
-
- ☐
- other copyright claimant
-
- ☐
- owner of exclusive right(s)
-
- ☐
- authorized agent of

of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge.

Name of author or other copyright claimant, or owner of exclusive right(s)

Typed or printed name and date If this application gives a date of publication in space 3, do not sign and submit it before that date.

Wayne Foster Berry

Date 9-27-99

Handwritten signature DO

Certificate
will be
mailed in
window
envelope
to this
address:Name Wayne Foster Berry
Number/Street/Apt. 425 South Street, #2603 A
City/State/ZIP Honolulu, Hawaii 96813

- Complete all necessary spaces
-
- Sign your application in space 8

1. Application form
2. Nonrefundable filing fee in check or money order As of July 1, 1999,
payable to Register of Copyrights the
3. Deposit material the
Library of Congress
Copyright Office
101 Independence Avenue, S.E.
Washington, D.C. 20540-6000
Biling
fee for
Form TX
is \$38.*17 U.S.C. § 506(e) Any person who knowingly makes a false representation of a material fact in the application for copyright registration provided for by section 402, or in any written statement filed in connection with the application, shall be fined not more than \$2,500.
June 1989—200,000
WEB REV. June 1999
U.S. GOVERNMENT PRINTING OFFICE: 1999-454-879/19

ATTACHMENT 4